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4 CODY BACA, et al.,

5 Plaintiffs,

6 v.

7 JOHN MUIR HEALTH, et al.,

8 Defendants.

9 Case No. 21-cv-04898-JSW

10 **ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT AND
DENYING MOTION TO STRIKE**

11 Re: Dkt. No. 25, 37

12
13 Now before the Court for consideration are the (1) motion for summary judgment filed by
14 Defendants John Muir Health (“JMH”) and Daman Mott (“Mott”) (collectively, “Defendants”)
15 and (2) motion to strike filed by Plaintiffs Cody Baca (“Baca”) and Leticia Baca (“L. Baca”)
16 (collectively, “Plaintiffs”). The Court has considered the parties’ papers, relevant legal authority,
17 and the record in the case, and it finds this matter suitable for disposition without oral argument.
18 See N.D. Civ. L.R. 7-1(b). For the following reasons, the Court GRANTS Defendants’ motion for
19 summary judgment and DENIES Plaintiffs’ motion to strike.20 **BACKGROUND**21 Baca is a certified nursing assistant who has worked for JMH since 2008. (Dkt. No. 25-1,
22 Declaration of Marcie Fitzsimmons (“Fitzsimmons Decl.”) ¶ 2, Ex. 1 (“Baca Depo.”) at 30:22-25;
23 *id.* at 31:1-17.) As a certified nursing assistant (“CNA”), Baca works with a registered nurse to
24 provide patient care. (*Id.* ¶ 3, Ex. 2.)25 On October 25, 2017, a patient at JMH complained that a man had sexually assaulted him
26 while he slept in his hospital bed. (*Id.* ¶ 15, Ex. 14 (“Patient Transcript”) at 35:4-11, 35:26-36:16;
27 *id.* ¶ 12, Ex. 11.) The patient called 911 to report the assault, and the dispatcher told him to notify
28 the patient’s supervisor or nurse. (Patient Transcript at 32:15-33:10.) The patient informed his

1 nightshift nurse and his daytime nurse about the alleged incident. (Fitzsimmons Decl. ¶ 9, Ex. 8
2 (“Cheeks Depo.”) at 30:4-31:5, 35:15-17, 40:3-13.) The nurses informed Baca and brought him
3 into the conversation because Baca had been a part of the patient’s nighttime care team. (Baca
4 Depo. at 239:12-240:4.) Baca and the nurses reported the patient’s allegations to the evening
5 charge nurse. (*Id.* at 239:12-20.)

6 Mott, the Medical and Surgical Services director, became aware of the patient’s complaint
7 later that morning. (Fitzsimmons Decl. ¶ 10, Ex. 9 (“Mott Depo.”) at 45:8-12, 48:19-49:20.) Mott
8 agreed to handle the complaint because the Risk and Quality Department was short-staffed. (*Id.* at
9 51:1-22.) Mott interviewed the patient in his room and found the patient credible. (*Id.* at 75:4-
10 76:12.) During the interview, the patient stated that he still wanted to file a formal police
11 complaint, and he dialed 911 again. (*Id.*) Mott asked the patient if he could speak to the
12 dispatcher and asked the dispatcher to transfer him to the non-emergency line. (*Id.* at 76:17-77:3.)
13 Once transferred, Mott asked the police to send an officer and an interpreter to the hospital
14 because there was a patient that wanted to make a complaint of sexual assault. (*Id.*)

15 After speaking with the police on the phone, Mott asked the patient to look at photographs
16 of JMH employees to see if he could identify the assailant or rule out any potential assailants. (*Id.*
17 at 79:5-81:18-22.) The patient agreed, and Mott showed the patient photographs of the JMH
18 employees who worked in the patient’s unit. (*Id.* at 84:8-85:17.) Mott showed the patient the
19 photographs twice, and the patient did not identify anyone. (*Id.* at 85:25-86:2, 87:8-88:5.) Mott
20 then showed the patient a picture of Baca and told the patient that Baca was the CNA who cared
21 for him the prior night. (*Id.* at 88:14-89:17.) The patient replied, “That’s him.” (*Id.*)

22 Shortly thereafter, police officers arrived at the hospital. Officer Michael Watson (“Officer
23 Watson”) interviewed the patient with assistance of a translator from the police department. Mott
24 and Baca were not present for the patient’s interview with the police. (Baca Depo. at 209:10-16;
25 Mott Depo. at 73:25-74:8; 90:5-11.) The police collected DNA swabs from the patient. (Patient
26 Transcript at 42:17-18.)

27 Later that day, Officer Watson interviewed Baca. (Baca Depo. at 60:12-61:1.) Officer
28 Watson testified that he believed Baca had been identified to him as a suspect prior to his arrival at

1 the hospital. (Watson Depo. at 37:7-14.) Baca asked Mott and another JMH supervisor, Deborah
2 Lamont, to be present for his police interview. (*Id.* at 60:12-61:7.) Baca informed Officer Watson
3 that he visited the patient's room four times during the night to check his vitals and bring him
4 water. (Fitzsimmons Decl. ¶ 16, Ex. 15 ("Baca Transcript") at 61:7-9.) When asked if touched
5 the patient's genitals, Baca denied doing so. (Watson Depo. at 43:21-44:8.) Officer Watson asked
6 to take a DNA swab from Baca and administer a polygraph and voice analyzer test, which Baca
7 declined. (Baca Depo. at 104:9-105:8.)

8 That same day, Mott and Leslie Yewell, the Director of Employee and Labor Relations,
9 met with Baca. (Baca Depo. at 66:24-67:12; Fitzsimmons Decl. ¶ 8, Ex. 7 ("Yewell Depo") at
10 20:9-13.) They discussed the allegations against Baca, and Yewell asked Baca if he touched the
11 patient's genitals, which Baca denied. (Yewell Depo at 37:21-38:2.) Baca was surprised about
12 the accusations. (*Id.*) Yewell and Mott advised Baca they were putting him on paid
13 administrative leave while the patient's complaint was under review. (Dkt. No. 25-2, Declaration
14 of Leslie Yewell ("Yewell Decl.") ¶ 4.)

15 JMH conducted an internal investigation of the incident. As part of the internal
16 investigation of the incident, Mott discussed the incident with the patient's attending physician,
17 who advised Mott that it was highly likely that the patient was sensitive to medication, which
18 caused him to have a vivid dream that led the patient to believe that an assault had occurred.
19 (Mott Depo. at 133:3-16.) Mott contacted Officer Watson to relay the attending physician's
20 thoughts. (*Id.*; *see also* Fitzsimmons Decl., Ex. 11.) JMH found insufficient information to
21 substantiate the allegations and concluded "it is more likely than not that the patient had a vivid
22 dream." (Yewell Depo at 46:16-22; Baca Depo. at 97:8-14.) After the internal investigation
23 concluded, JMH informed Baca he could return to work, and Baca returned for his next scheduled
24 shift on October 30, 2017. (Baca Depo. at 80:25-81:2; Yewell Decl. ¶ 6.)

25 On February 14, 2018, the police informed JMH that someone else's DNA had been found
26 on the patient's genitals. (Yewell Decl. ¶ 8.) On February 15, 2018, the police executed a search
27 warrant for a DNA swab from Baca. (Fitzsimmons Decl. ¶ 12, Ex. 11; Baca Depo. at 84:25-85:6.)
28 The results of the police DNA test reportedly showed Baca's DNA on the patient's genitals.

1 (Fitzsimmons Decl. ¶ 21, Ex. 20 (“Kim Transcript”) at 4:21-5:4, 9:23-10:17.)

2 On February 16, 2018, Baca married Plaintiff Leticia Baca (“L. Baca”). (Baca Depo. at
3 21:12-16.)

4 Around February 22, 2018, the District Attorney filed a criminal complaint against Baca in
5 Contra Costa County Superior Court. (Baca Depo. at 144:2-15, 154:13-19.) The criminal
6 complaint charged Baca with two counts of sexual battery and one count of first-degree burglary.
7 (Baca Transcript at 5:15-6:19.) On February 23, 2018, JMH placed Baca on administrative leave
8 following his arrest. (Baca Depo. at 93:1-6; Yewell Decl. ¶ 9.) Baca requested and received a
9 copy of JMH’s investigation report on February 23, 2018. (Baca Depo. at 98:12-99:7.) At that
10 time, Baca learned that Mott had shown the patient photos of JMH employees where the patient
11 identified Baca as the alleged perpetrator. (*Id.* at 217:4-17, 218:11-219:13.)

12 On March 1, 2018, JMH’s president sent a memo to JMH physicians, nurses, staff, and
13 volunteers, which stated:

14 This morning, the Walnut Creek Police Department issued a press
15 release indicating that they arrested Cody Baca, a nursing assistant at
16 the Walnut Creek Medical Center, on sexual battery and burglary
17 charges stemming from a patient complaint.

18 The care and safety of our patients is always our highest priority and
19 we take all patient complaints very seriously. We do not know if the
20 charges will be proven true, but in light of the serious nature of the
21 allegations and the fact of the arrest, we have placed Mr. Baca on
22 administrative leave.

23 (*Id.* at 130:11-131:15; Fitzsimmons Decl. ¶ 5, Ex. 4.)

24 Baca’s criminal trial lasted six weeks from July 26, 2019 through September 4, 2019. (*Id.*
25 at 123:16-21.) The jury acquitted Baca of all charges. (*Id.* at 128:2-4.) JMH reinstated Baca on
26 October 1, 2019. (*Id.* at 128:5-7; Yewell Decl. ¶ 10.)

27 On October 25, 2019, Plaintiffs filed this action in Contra Costa County Superior Court
28 alleging claims for negligence, intentional infliction of emotional distress, loss of consortium and
exemplary damages. (Dkt. No. 1-1, Ex. A.) On June 18, 2021, Plaintiffs filed an amended
complaint asserting causes of action for: (1) violation of 42 U.S.C. section 1983; (2) negligence;
(3) defamation; (4) loss of consortium; and (5) intentional infliction of emotional distress

1 (“IIED”). Defendants removed the action to federal court on June 25, 2021. On May 25, 2022,
2 Defendants moved for summary judgment pursuant to Federal Rule of Civil Procedure 56.

3 ANALYSIS

4 A. The Court Denies Plaintiffs’ Motion to Strike.

5 On July 22, 2022, Plaintiffs filed a motion strike Exhibits 11¹, 14-15, and 17-20 from
6 Defendants’ motion for summary judgment. Exhibits 14, 15, 17-20 are transcripts of criminal trial
7 testimony from Baca, the patient, and police officers Watson, Maldonado, Kim, and Leonard.
8 Defendants cite to these transcripts in support of their motion for summary judgment. Plaintiffs
9 move to strike the transcripts because Defendants did not produce the transcripts during discovery.
10 Plaintiffs assert they will be prejudiced if Defendants are permitted to rely on this undisclosed
11 evidence. The Court finds Plaintiffs’ arguments unpersuasive and denies the motion to strike.

12 First, Plaintiffs’ motion is untimely. Civil Local Rule 7-3(a) requires that any evidentiary
13 objections to a motion be contained within the opposition brief. N.D. Civ. L.R. 7-3(a). Local
14 Rule 7-3(d) states that “[o]nce a reply is filed, no additional memoranda, papers or letters may be
15 filed without prior Court approval.” N.D. Civ. L.R. 7-3(d). Plaintiffs filed their opposition to
16 Defendants’ summary judgment motion on June 30, 2022 and did not object to any of Defendants’
17 exhibits in their motion. (*See* Dkt. No. 30.) On July 22, 2022, more than two weeks after
18 Defendants filed their reply in support of summary judgment, Plaintiffs filed their motion seeking
19 to strike several of Defendants’ exhibits. Plaintiffs do not defend the timeliness of their motion to
20 strike, and the Court considers Plaintiffs’ silence as a concession that their motion is untimely.

21 Even if Plaintiffs’ motion was timely, they have not shown that Defendants failed in their
22 discovery obligations such that the exhibits should be stricken. Federal Rule of Civil Procedure
23 26(a) requires a party to provide “a copy—or a description by category and location—of all
24 documents, electronically stored information, and tangible things that the disclosing party has in
25 its possession, custody or control and may use to support its claims or defenses, unless the use

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¹ Exhibit 11 is a copy of the Walnut Creek Police Department’s report regarding the incident,
28 produced by Plaintiffs. (*See* Dkt. No. 25-1.) This exhibit is not a trial transcript, and Plaintiffs
offer no argument why it should be stricken. The Court denies the motion to strike Exhibit 11.

1 would be solely for impeachment.” Fed. R. Civ. P. 26(a)(1)(A)(ii). Federal Rule of Civil
2 Procedure 37(c) states that if a party fails to provide information as required by Rule 26(a), the
3 party cannot use that information to supply evidence on a motion, at a hearing, or a trial, unless the
4 failure was substantially justified or is harmless. Fed. R. Civ. P. 37(c)(1).

5 Defendants disclosed the criminal trial transcripts as documents that they may use to
6 defend against Plaintiffs’ claims in their initial disclosures. (Dkt. No. 38-1, Declaration of Marcie
7 Fitzsimmons iso Opp. to Motion to Strike (“Fitzsimmons Decl.”) ¶ 2, Ex. 1.) Moreover, although
8 Federal Rule of Civil Procedure 34(a)(1) permits a party to serve on any other party a request for
9 discoverable documents within that party’s “possession, custody, or control,” it is “well
10 established that discovery need not be required of documents of public record which are equally
11 accessible to all parties.” *Sec. & Exch, Comm’n v. Samuel H. Sloan & Co.*, 369 F. Supp. 994, 995-
12 96 (S.D.N.Y. 1973); *see also Keogh v. Pearson*, 35 F.R.D. 20, 23 (D.D.C.1964) (holding that
13 defendant was not required to turn over newspaper columns that were not “under the exclusive
14 control of defendant” but were “readily available” to both parties because the plaintiff “cannot
15 expect defendant to do his work for him”). Here, it is undisputed that the criminal trial transcripts
16 are public documents available to Plaintiffs by purchase from the Contra Costa County Superior
17 Court website, a fact which Defendants informed Plaintiffs of in their discovery responses.² (See
18 Fitzsimmons Decl. ¶ 4, Ex. 3.)

19 Moreover, any failure to provide the transcripts to Plaintiffs was “harmless.” *See* Fed. R.
20 Civ. P. 37(c)(1). Plaintiffs cannot claim that they were unaware of the criminal trial transcripts or
21 blindsided by the information contained in the transcripts because they pertain to Plaintiff Baca’s
22 own criminal trial. Plaintiffs had sufficient time and opportunity to obtain the transcripts
23 themselves but chose not to do so.

24 For these reasons, Plaintiffs’ motion to strike is DENIED.

25 **B. Defendants’ Objections to Plaintiffs’ Evidence.**

26 Defendants object to evidence Plaintiffs submit in support of their opposition to summary

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² There is also no indication that Plaintiffs are unable to pay for the transcripts themselves.

1 judgment. Defendants first contend that Plaintiffs assert several facts that are contradicted by
2 sworn testimony and thus, the Court should not consider these facts in deciding the motion.
3 Defendants challenge the following assertions of facts in Plaintiffs' opposition: (1) Mott wanted
4 "someone to be named" when he showed the patient the photographs of JMH employees (Opp. at
5 7:7-19); (2) Mott was "informally reprimanded" following the incident (Opp. at 11:10-21); and (3)
6 Mott now admits he was wrong to show the patient the photographs of JMH employees. (Opp. at
7 15.)

8 The Court finds the cited testimony does not support Plaintiffs' assertion. Mott's
9 deposition testimony directly contradicts the first two assertions. (See Mott Depo at 86:22-6,
10 34:23-25.) With regard to the third assertion, Plaintiffs misconstrue the meaning of Mott's
11 testimony. Accordingly, the Court sustains Defendants' objections to these assertions of facts.
12 *See Thompson v. Williams*, 211 Cal.App.3d 566, 574 (1989) ("The assertion of facts contrary to
13 prior testimony does not constitute 'substantial evidence of the existence of a triable issue of
14 fact.'") (quoting *D'Amico v. Board of Med. Examiners*, 11 Cal. 3d 1, 21-22 (1974)).

15 Defendants also contend that Plaintiffs' assertions of fact based on the Midas Report are
16 contradicted by the evidence. To the extent Plaintiffs assert that the Midas Report establishes that
17 Mott offered Baca an attorney and that Mott was the only person involved in authoring the Midas
18 Report, those assertions are contradicted by Mott's testimony and the Midas Report. The Court
19 sustains Defendants' objections and will not consider these assertions as facts to the extent they
20 contradict prior sworn testimony.

21 Defendants also object to Exhibit 15 of the Nold Declaration, which is a collection of
22 "news media reports that appear when you search for 'Cody Baca'." (Dkt. No. 30-1, Declaration
23 of Melissa Nold ("Nold Decl.") ¶ 16.) Defendants object on the grounds that the exhibit has not
24 been authenticated and is inadmissible hearsay. The Court overrules the objection as moot
25 because the Court did not rely on these exhibits in considering the motion.

26 Defendants also object to Exhibit 17 of the Nold Declaration. Exhibit 17 is an "Unusual
27 Occurrence Report" JMH submitted to the California Department of Public Heath regarding the
28 incident on February 27, 2018. (Nold Decl. ¶ 18.) Defendants argue the exhibit is improperly

1 authenticated and is inadmissible hearsay because it is an out-of-court statement offered to prove
2 the truth of the matter asserted: that it contains details that do not appear in other documents.
3 *Mahone v. Lehman*, 347 F.3d 1170, 1173 (9th Cir. 2003) (an out-of-court statement is hearsay and
4 inadmissible when the inference the proponent wants the trier of fact to draw from the statement
5 depends on its truth). The Court agrees; the document is not properly authenticated and is
6 inadmissible hearsay. The Court sustains the objection to Exhibit 17.

7 **C. Legal Standard Applicable to Motion for Summary Judgment.**

8 “A party may move for summary judgment, identifying each claim or defense . . . on
9 which summary judgment is sought.” Fed. R. Civ. P. 56(a). A principal purpose of the summary
10 judgment procedure is to identify and dispose of factually unsupported claims. *Celotex Corp. v.*
11 *Catrett*, 477 U.S. 317, 323-24 (1986). Summary judgment, or partial summary judgment, is
12 proper “if the movant shows that there is no genuine dispute as to any material fact and the movant
13 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The Court may not weigh
14 evidence or make determinations of credibility. Rather, “[t]he evidence of the non-movant is to be
15 believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby*,
16 477 U.S. 242, 255 (1986).

17 The party moving for summary judgment bears the initial burden of identifying those
18 portions of the pleadings, discovery, and affidavits that demonstrate the absence of a genuine issue
19 of material fact. *Celotex*, 477 U.S. at 323; *see also* Fed. R. Civ. P. 56(c). An issue of fact is
20 “genuine” only if there is sufficient evidence for a reasonable fact finder to find for the non-
21 moving party. *Anderson*, 477 U.S. at 248-49. A fact is “material” if it may affect the outcome of
22 the case. *Id.* at 248. If the party moving for summary judgment does not have the ultimate burden
23 of persuasion at trial, the party must produce evidence which either negates an essential element of
24 the non-moving party’s claims or show that the non-moving party does not have enough evidence
25 of an essential element to carry its ultimate burden of persuasion at trial. *Nissan Fire & Marine*
26 *Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

27 Once the moving party meets its initial burden, the non-moving party must “identify with
28 reasonable particularity the evidence that precludes summary judgment.” *Keenan v. Allan*, 91

1 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th
2 Cir. 1995). It is not the Court’s task “to scour the record in search of a genuine issue of triable
3 fact.” *Id.* (quoting *Richards*, 55 F.3d at 251); *see also* Fed. R. Civ. P. 56(c)(3) (“The court need
4 consider only the cited materials, but it may consider other materials in the record.”). “A mere
5 scintilla of evidence will not be sufficient to defeat a properly supported motion for summary
6 judgment; rather, the nonmoving party must introduce some significant probative evidence
7 tending to support the complaint.” *Summers v. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th
8 Cir. 1997) (citation and internal quotation marks omitted). If the non-moving party fails to point
9 to evidence precluding summary judgment, the moving party is entitled to judgment as a matter of
10 law. *Celotex*, 477 U.S. at 323.

11 **D. Defendants are Entitled to Summary Judgment on the Defamation Claim.**

12 Defendants argue that Baca’s defamation claim fails as a matter of law because it is
13 untimely, and even if the claim was timely, it fails because the allegedly defamatory statements
14 are true. Defendants also argue Baca’s defamation claim fails because the statements at issue are
15 protected by privilege.

16 Plaintiffs fail to address this claim or respond to Defendants’ arguments in their
17 opposition. Thus, the Court considers the claim abandoned and grants summary judgment in favor
18 of Defendants as to this claim. *Bolbol v. City of Daly City*, 754 F. Supp. 2d 1095, 1115 (N.D. Cal.
19 2010) (construing plaintiff’s failure to address issue in opposition brief as a concession that she
20 could not proceed on the claim and granting summary judgment in favor of defendants);
21 *Conservation Force v. Salazar*, 677 F. Supp. 2d 1203, 1211 (N.D. Cal. 2009), *aff’d*, 646 F.3d 1240
22 (9th Cir. 2011) (“Where plaintiffs fail to provide a defense for a claim in opposition, the claim is
23 deemed waived.”) (citing *Locricchio v. Office of U.S. Trustee*, 313 Fed. Appx. 51, 52 (9th Cir.
24 2009)).

25 **E. Defendants are Entitled to Summary Judgment on the Section 1983 Claim.**

26 Defendants argue they are entitled to summary judgment with respect to Baca’s Section
27 1983 claim because it is untimely and even if it were timely, Plaintiffs cannot show that Mott
28 acted under the color of state law. Defendants further argue that the claim fails as a matter of law

1 because the Sixth Amendment right to counsel, which is the basis for Plaintiff's Section 1983
2 claim, does not apply before the initiation of criminal proceedings.

3 Plaintiffs fail to address this claim or respond to Defendants' arguments in their
4 opposition. Thus, the Court considers the claims abandoned and grants summary judgment in
5 favor of Defendants as to this claim. *Bolbol*, 754 F. Supp. 2d at 1115; *Conservation Force*, 677 F.
6 Supp. 2d at 1211.

7 **F. Defendants are Entitled to Summary Judgment on Baca's Negligence Claim.**

8 Defendants argue they are entitled to summary judgment on the negligence claim because
9 Plaintiffs cannot establish the elements of breach or causation. The elements of a cause of action
10 for negligence are (1) a legal duty to use due care, (2) a breach of that duty; and (3) the breach is
11 the proximate or legal cause of the resulting injury. *Ladd v. County of San Mateo*, 12 Cal.4th 913,
12 917 (1996). Reasonable care typically does not mean preventing any and all harm; it means
13 exercising reasonably prudent caution under the circumstances. *Coyle v. Historic Mission Inn*
14 *Corporation*, 24 Cal.App.5th 627, 643 (2018). "Breach is the failure to meet the standard of
15 care." *Id.* The elements of breach and causation are ordinarily questions of fact for the jury's
16 determination. *Johnson v. Prasad*, 224 Cal. App. 4th 74, 83 (2014).

17 **1. Plaintiffs fail to establish breach.**

18 The California Supreme Court set forth the governing standard of care for workplace
19 investigations in *Cotran v. Rollings Hudig Hall Intern, Inc.*, 17 Cal.4th 93, 109. The Court held
20 that the critical question was whether the employer acted "in good faith and follow[ed] an
21 investigation that was appropriate under the circumstances." *Id.* As a result, courts are "unwilling
22 to compel employers to undertake a precise type of investigation as long as the process is
23 inherently fair." *King v. United Parcel Serv., Inc.*, 152 Cal. App. 4th 426, 439 (2007) (noting that
24 "flexibility is the signature lesson from *Cotran*.").

25 The Court finds the undisputed evidence shows that Mott and JMH undertook a good faith
26 investigation that was appropriate under the circumstances. After the patient alerted his care team
27 of the alleged sexual assault, Mott spoke with the patient to determine if the patient's complaint
28 was credible. The patient advised Mott that he wished to file a formal police complaint, and Mott

1 helped him call the police. Finding the patient's complaint credible, Mott attempted to find out if
2 any JMH employee was involved in the alleged assault by showing the patients photographs of the
3 JMH employees in that unit. Mott and Yewell met with Baca to inform him of the patient's
4 allegations and provided Baca with an opportunity to respond to the patient's allegations. JMH
5 put Baca on leave pending the investigation, and after JMH determined the patient's complaint
6 was unsubstantiated, it invited Baca to return to work.

7 The Court finds Defendants have submitted sufficient evidence to establish the
8 investigation JMH and Mott undertook was reasonable in the context of a patient accusing a
9 hospital employee of sexual assault. It was reasonable for Mott to meet with the patient, contact
10 the police, and try to find out what, if any, JMH employee was involved in the incident. Plaintiffs
11 criticize aspects of the investigation including the fact that Mott's actions in showing the patient
12 the photos is not specifically provided for by JMH policies. But Plaintiffs' criticism is insufficient
13 to permit the Court to infer that the investigation was unreasonable or that Mott acted in bad faith.
14 *See Jameson v. Pac. Gas & Elec. Co.*, 16 Cal. App. 5th 901, 912 (2017) ("Any investigation can
15 be criticized, and a plaintiff can always assert that more should have been done, or done
16 differently."). Plaintiffs identify no other evidence to support his position.

17 Defendants have submitted evidence establishing that they undertook a reasonable
18 investigation in good faith. Although the question of breach is usually a fact issue for the jury,
19 Plaintiffs have failed to provide evidence that a triable issue exists such that a jury could conclude
20 that Mott and JMH's investigation was not reasonable under the circumstances. *See Jameson*, 16
21 Cal. App. 5th at 912 (summary judgment appropriate where defendants undertook an adequate
22 investigation and the plaintiff failed to present sufficient evidence to establish a triable issue that
23 the investigation was procedurally inadequate or biased).

24 **2. Plaintiffs cannot establish the element of causation.**

25 Causation requires a connection between the defendant's breach and the plaintiff's injury.
26 *Coyle*, 24 Cal.App.5th at 645. To establish causation, a plaintiff must prove that the defendant's
27 conduct was a "substantial factor" in bringing about his or her harm. *Bowman v. Wyatt*, 186 Cal.
28 App. 4th 286, 312 (2010), *as modified on denial of reh'g* (July 28, 2010). "[C]onduct is not a

1 substantial factor in causing harm if the same harm would have occurred without that conduct.”
2 *Lawrence v. La Jolla Beach & Tennis Club, Inc.*, 231 Cal. App. 4th 11, 33 (citing *Yanez v.*
3 *Plummer*, 221 Cal. App. 4th 180, 187 (2013)). Where there is evidence that the harm could have
4 occurred even in the absence of the defendant’s negligence, “proof of causation cannot be based
5 on mere speculation, conjecture and inferences drawn from other inferences to reach a conclusion
6 unsupported by any real evidence....” *Padilla v. Rodas*, 160 Cal. App. 4th 742, 752 (2008).
7 “Although causation is a question of fact, it may be decided as a matter of law if, under undisputed
8 facts, reasonable minds could not differ.” *Iolab Corp. v. Seaboard Sur. Co.*, 15 F.3d 1500, 1506
9 (9th Cir. 1994) (citing *Onciano v. Golden Palace Restaurant*, 219 Cal.App.3d 385, 394-95
10 (1990)).

11 Plaintiffs argue Mott informed Officer Watson that the patient had identified Baca as his
12 assailant. Baca contends that because of Mott’s statement to Officer Watson, the police did not
13 investigate other possible suspects, and but for Mott’s statement, Baca would not have been
14 identified as a suspect in the police investigation.

15 The undisputed evidence contradicts Baca’s argument. It is undisputed that the patient
16 reported to the police that he was sexually assaulted by a male employee. The police investigated
17 the complaint, and as part of the investigation took a DNA swab of the patient’s genitals. The
18 results from the swab showed DNA that did not belong to the patient. It is undisputed that Baca
19 was the only male assigned to patient’s care team at the time of alleged assault. Given that Baca
20 was the sole male on the care team, he would have been identified as a suspect by the police
21 regardless of any investigation by Mott or JMH. Indeed, Officer Watson testified at his deposition
22 that the information provided by Mott was only one of several factors that caused him to identify
23 Baca as a suspect. (Watson Depo. at 32:19-33:14; 51:16-52:18.) Moreover, it is undisputed that
24 JMH and Mott played no role in the District Attorney’s decision to pursue criminal charges
25 against Baca after the DNA results from the patient’s genital swab matched Baca’s DNA.

26 Defendants have proffered sufficient evidence to show that the harm to Baca would have
27 occurred even in the absence of Mott and JMH’s investigation. Plaintiffs’ speculative argument
28 that Baca’s injury would not have occurred but for Mott’s statements to the police is unsupported

1 by real evidence and is insufficient to establish proof of causation. In the absence of any such
2 evidence of causation, the Court finds the trier of fact could not differ on the outcome of
3 causation, and Defendants are entitled to summary judgment on this issue. *Iolab Corp.*, 15 F.3d at
4 1506 n.4.

5 Because the Court finds Plaintiffs fail to show the existence of a genuine dispute of
6 material fact as to the elements of breach and causation, the Court GRANTS Defendants' motion
7 for summary judgment as to Plaintiffs' claim for negligence. Thus, the Court need not reach the
8 question of whether workers' compensation exclusivity bars this claim.

9 **G. Defendants are Entitled to Summary Judgment on the IIED Claim.**

10 Defendants argue that Baca's IIED claim is barred by worker's compensation exclusivity.
11 Cal. Labor Code § 3602. The Workers' Compensation Act ("WCA") is the exclusive remedy for
12 employees suffering physical or mental injuries arising out of the course of employment.
13 *Shoemaker v. Myers*, 52 Cal. 3d 1, 7, 15 (1990). The WCA's exclusive remedy provisions
14 institute a "compensation bargain" between employers and employees governing claims for such
15 injuries. *Id.* at 16. In this bargain, employees receive faster and more certain awards of
16 compensation in exchange for giving up the more varied and substantial damages available at
17 common law. *Id.*

18 The California Supreme Court has held that claims of IIED arising out of the course of
19 employment are generally preempted by the workers' compensation law. *Livitsanos v. Superior
Court*, 2 Cal. 4th 744, 754-55 (1992). Such IIED claims are preempted even where the emotional
21 distress did not result in any physical injury or compensable disability. *Id.* at 755-756 ("[T]here is
22 no merit to plaintiff's assertion that purely emotional injuries lie outside the scope of the workers'
23 compensation system."). However, IIED claims are not preempted if the employer's alleged
24 misconduct (1) "contravenes fundamental public policy," or (2) "exceeds the risk inherent in the
25 employment relationship." *Id.* at 754.

26 To determine whether conduct is outside the normal employment relationship, the court
27 considers whether "the alleged acts, bereft of their motivation, can ever be viewed as a normal
28 aspect of the employer relationship." *Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund*, 24

1 Cal. 4th 800, 822 (2001). An employer's conduct does not "exceed the risk inherent in the
2 employment relationship" when it consists of "actions which are a normal part of the employment
3 relationship, such as demotions, promotions, criticism of work practices, and frictions in
4 negotiations as to grievances." *Cole v. Fair Oaks Fire Protection Dist.*, 43 Cal. 3d 148, 160
5 (1987). By contrast, "conduct in which an employer steps out of its 'proper role' as an employer
6 or conduct of 'questionable relationship to the employment' ...is not encompassed within the
7 compensation bargain and is not subject to the exclusivity rule." *Singh v. Southland Stone, U.S.A., Inc.*,
8 186 Cal. App. 4th 338, 367 (2010). For example, California courts have found claims of
9 false imprisonment and sexual harassment are not within the compensation bargain and thus not
10 subject to exclusivity. *See Fermino v. Fedco, Inc.* 7 Cal. 4th 701, 723 (1994) (false imprisonment
11 of employee during theft investigation not within scope of the exclusivity rule because "such
12 action cannot be said to be a normal aspect of the employment relationship"); *Hart v. Nat'l Mortg. & Land Co.* 189 Cal. App. 3d 1420, 1431 (1987) (exclusivity doctrine not applicable to intentional
13 infliction of emotional distress claim based on sexual harassment).

14
15 Here, the challenged conduct—Mott and JMH's investigation into accusations of sexual
16 assault by a patient against a hospital employee—is a normal part of the employment relationship
17 between a hospital and its employees. Additionally, Mott did not step out of his proper role or
18 engage in conduct of questionable relationship to the employment in seeking to investigate and
19 identify the JMH employee, if any, involved in the alleged assault.

20 Baca nevertheless argues that the conduct here was not an inherent risk of employment
21 because Mott framed him and knowingly lied to the police. As an initial matter, Baca's assertions
22 are unsupported by evidence. Regardless, even if Mott had intentionally acted to frame Baca,
23 workers' compensations would still be the exclusive remedy for his IIED claim. *Miklosy v. Regents of Univ. of California*, 44 Cal. 4th 876, 902 (2008) ("Even if such conduct may be
24 characterized as intentional, unfair or outrageous, it is nevertheless covered by the workers'
25 compensation exclusivity provisions.").³

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³ The exception for conduct that "contravenes fundamental public policy" is aimed at permitting a *Tamony* action for wrongful termination to proceed despite the workers' compensation exclusivity

1 The Court finds that Baca's IIED claim fails because it within the exclusive remedy
2 provisions of the California Workers' Compensation Act.

3 Additionally, a necessary element of a claim for intentional infliction of emotional distress
4 is outrageous conduct by the defendant. "Outrageous conduct" is that which is so extreme as to
5 exceed all bounds of that usually tolerated in a civilized society. *Corales v. Bennett*, 567 F.3d 554
6 (2009). Baca's unfounded assertions that Mott and JMH engaged in extreme conduct are
7 unsupported by the evidence in the record.

8 Baca also fails to establish other essential elements of claim for IIED. *Hughes v. Pair*, 46
9 Cal.4th 1035, 1050 (2009) (IIED claim requires proving (1) extreme and outrageous conduct by
10 defendants; (2) intention to cause or reckless disregard of the probability of causing emotional
11 distress; (3) severe emotional suffering; and (4) actual and proximate causation of the emotional
12 distress). Baca provides no evidence establishing that either Mott or JMH acted with the intent to
13 cause or reckless disregard for the probability of causing emotional distress. And as discussed
14 above, Baca cannot show that JMH and Mott were the actual and proximate cause of his damage.
15 Thus, Baca's IIED claims fails on the merits.

16 **H. The Loss of Consortium Claim Fails.**

17 To prove a claim for loss of consortium, L. Baca must prove: (1) her spouse was injured by
18 someone else's negligence or other wrongful act; (2) she and Baca were married at the time of the
19 injury; (3) she suffered the loss of Baca's consortium; and (4) such loss resulted from Defendants'
20 wrongful act. *Vanhooser v. Superior Court*, 206 Cal.App.4th 921, 927 (2012).

21 Because Baca's negligence and IIED claims fail, L. Baca's loss of consortium claim fails
22 too. *Hahn v. Mirda*, 147 Cal.App.4th 740, 746 n.2 (2007) ("A cause of action for loss of
23 consortium is, by its nature, dependent on the existence of a cause of action for tortious injury to a

24
25 rule. *Miklosy*, 44 Cal. 4th at 902-03. As a result, courts have found that workers' compensation
26 exclusivity preempts IIED claims "even if they are based on conduct that allegedly violates a
27 fundamental public policy, because the...public policy exception operates only to permit *Tamency*
28 actions for wrongful termination..." *Langevin v. Fed. Express Corp.*, No. CV 14-08105 MMM
FFMX, 2015 WL 1006367, at *10 (C.D. Cal. Mar. 6, 2015) (collecting cases); *see also Yau v.*
Santa Margarita Ford, Inc., 229 Cal. App. 4th 144, 161-62 (2014) (distinguishing cases that found
IIED claims were not barred because the cases were decided before *Miklosy*). Thus, the public
policy exception to workers' compensation exclusivity does not apply to Baca's IIED claim.

1 spouse.”).

2 Additionally, the loss of consortium claim fails because Baca and L. Baca were not
3 married at the time of injury, which is fatal to the loss of consortium claim. *Elden v. Sheldon*, 46
4 Cal. 3d 267, 278 (1988), *as modified* (Sept. 19, 1988) (“[T]he right to recover for loss of
5 consortium is founded on the relationship of marriage, and absent such a relationship the right
6 does not exist.”). Plaintiffs were married on February 16, 2018. The alleged sexual assault
7 occurred on October 25, 2017, prior to their marriage. The Court is not persuaded by Plaintiffs’
8 argument that the “majority of Plaintiffs’ injuries occurred after the arrest” when they were
9 married. The alleged tortious incident giving rise to this action is the alleged sexual assault and
10 Mott and JMH’s investigation thereof, and it is undisputed that Baca and L. Baca were not married
11 at that time.

12 For these reasons, Plaintiffs’ claim for loss of consortium fails as a matter of law. The
13 Court need not reach the question of whether workers’ compensation exclusivity bars this claim.

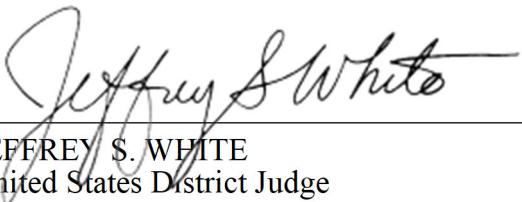
14 **CONCLUSION**

15 For the foregoing reasons, the Court GRANTS Defendants’ motion for summary
16 judgment. The Court DENIES Plaintiffs’ motion to strike.

17 A separate judgment shall issue, and the Clerk shall close the file.

18 **IT IS SO ORDERED.**

19 Dated: November 16, 2022

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21 JEFFREY S. WHITE
United States District Judge

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